STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO, Complainant, and LINDA LINGLE, Governor, State of Hawaii; and MARIE LADERTA, Director, Department of Human Resources Development, State of Hawaii, Respondents.	CASE NOS.: CE-01-716a CE-10-716b ORDER NO. 2636 ORDER

ORDER

Complainant is hereby directed to submit a proposed order, including proposed findings of fact and conclusions of law, granting Complainant's Motion for Interlocutory Relief and Cross Motion for Summary Judgment; Granting Complainant's Motion for Summary Judgment; Denying Respondents' Motion for Dismissal, or in the Alternative, Partial Dismissal of Motion for Interlocutory Relief; and Denying Respondents' Motion for Summary Judgment, reflecting the Hawaii Labor Relations Board's (Board) ruling in this case,[1] including the following:

I. Procedural History.

On July 8, 2009, Complainant filed a prohibited practice complaint (Complaint) against Respondents, alleging, inter alia, that Complainant made requests for educational and informational meetings for Unit 1 and Unit 10 members to be held on the island of Hawaii at various times and locations on July 13, 2009, through July 16, 2009, and on the island of Maui from July 21, 2009, to August 6, 2009; that Complainant was notified by Respondent Laderta's secretary that no decision would be made until a written decision had been made by the judge (an apparent reference

[1]The First Amended Complaint filed by Complainant on August 7, 2009, is similar to the original Complaint filed in this proceeding, with the exception of the additional allegation of prohibited practice pursuant to Hawaii Revised Statutes (HRS) § 89-13(a)(5), and the removal of Diane Ito as a respondent. The motions filed in this proceeding regarding the Complaint are reviewed by the Board with respect to the First Amended Complaint as well.

to the Honorable Karl Sakamoto's order granting temporary restraining order regarding a statewide furlough); and that Respondents committed prohibited practices in violation of Hawaii Revised Statutes (HRS) §§ 89-13(a)(1), (7), and (8). The Complaint also included Laderta's secretary, Diane Ito (Ito), as a respondent.

On July 9, 2009, Complainant filed a Motion for Interlocutory Relief.

On July 14, 2009, Complainant filed an Ex Parte Motion to Shorten Time to Hear UPW's Motion for Interlocutory Relief.

On July 17, 2009, Respondents filed their Answer to Prohibited Practice Complaint Filed on July 8, 2009 (Answer).

On July 21, 2009, Complainant filed a Motion for Summary Judgment.

On July 21, 2009, Respondents filed a Motion to Extend Time to Respond to Motion for Interlocutory Relief and a Statement of Opposition to Ex Parte Motion to Shorten Time to Hear UPW's Motion for Interlocutory Relief.

On July 22, 2009, Complainant filed its Opposition [to] Respondents' Motion to Extend Time to Respond to Motion for Interlocutory Relief.

On July 23, 2009, Respondents filed a Reply to UPW's Opposition to Motion to Extend Time to Respond to Motion for Interlocutory Relief.

On July 28, 2009, Respondents filed a Memorandum in Opposition to UPW's Motion for Summary Judgment Filed July 21, 2009.

On July 28, 2009, Complaint filed a Motion to Amend Complaint. The amended complaint would remove Laderta's secretary as a respondent, allege that Respondents refused to approve (without justification or good cause) the requests for approval of the educational and informational meetings, and add an allegation of prohibited practice under HRS § 89-13(a)(5).

On July 30, 2009, Respondents moved for Dismissal, or in the Alternative, Partial Dismissal of Motion for Interlocutory Relief, arguing that the controversy was moot because the meeting dates had passed or would pass by the time the hearing was held, and that the contracts had expired and the provisions dealing with educational and informational meetings were not automatically renewed.

On July 31, 2009, Respondents filed a Motion for Summary Judgment, arguing that the meetings were scheduled to be held after the contracts expired and the employer was not required to act on the requests as the provisions of the contract do not

automatically renew; that educational and informational meetings are permissive subjects, not mandatory subjects, of negotiation; and that the issue is not ripe for litigation because at the time the Complaint was filed, no decision had yet been made regarding whether or not the meetings would be held.

On August 3, 2009, the Board issued Order No. 2627, Denying Respondent's Motion to Extend Time to Respond to Motion for Interlocutory Relief and Denying Complainant's Motion to Shorten Time to Hear Motion for Interlocutory Relief, and gave notice that the Board would conduct a hearing on Complainant's Motion for Interlocutory Relief; Complainant's Motion for Summary Judgment; Complainant's Motion to Amend Complaint; Respondent's Motion for Dismissal, or in the Alternative, Partial Dismissal of Motion for Interlocutory Relief; and any other dispositive motion on August 6, 2009.

On August 4, 2009, Respondents filed a Motion to Dismiss Diane Ito as a Co-Respondent, arguing that Ito is not a "public employer" under chapter 89.

On August 4, 2009, Complainant filed a Memorandum in Opposition to Respondents' Motion to Dismiss and for Summary Judgment and in Support of Complainant's Cross Motion for Summary Judgment.

At the motions hearing on August 6, 2009, the Board orally granted Complainant's Motion to Amend Complaint. The amended complaint is similar to the original Complaint, except with the additional allegation of prohibited practice pursuant to HRS § 89-13(a)(5), and the removal of Laderta's secretary as a respondent. The Board denied Respondents' Motion to Dismiss Diane Ito as a Co-Respondent as moot.

On August 7, 2009, Complainant filed its First Amended Prohibited Practice Complaint.

On August 14, 2009, Respondents filed their Answer to First Amended Prohibited Practice Complaint.

On August 19, 2009, the UPW filed a Supplemental Submission and Request for Remedies.

On August 27, 2009, Respondents filed their Statement of Opposition to UPW's Supplemental Submission and Request for Remedies Filed on August 19, 2009.

II. Factual Background.

At all relevant times, Complainant was or is an employee organization[2] and the exclusive bargaining representative, within the meaning of HRS § 89-2, of employees included in bargaining unit 01, composed of nonsupervisory employees in blue collar positions, and bargaining unit 10, composed of institutional, health, and correctional workers. See HRS § 89-6(1).

At all relevant times, Respondents were or are public employers within the meaning of HRS § 89-2.[3]

Complainant and Respondents are parties to the Unit 1 and Unit 10 collective bargaining agreements (CBAs) with effective dates July 1, 2007, through June 30, 2009.

Section 8 of the Unit 01 agreement provides in relevant part:

> 8.01 The Union may hold informational and educational meetings four (4) times each fiscal year to be conducted by its representatives and which shall be open to all Employees in the bargaining unit.

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[2]HRS § 89-2 provides in relevant part:

"Employee organization" means any organization of any kind in which public employees participate and which exists for the primary purpose of dealing with public employers concerning grievances, labor disputes, wages, hours, amounts of contributions by the State and counties to the Hawaii employer-union health benefits trust fund or a voluntary employees' beneficiary association trust, and other terms and conditions of employment of public employees.

[3]HRS § 89-2 provides in relevant part:

"Employer" or "public employer" means the governor in the case of the State, the respective mayors in the case of the counties, the chief justice of the supreme court in the case of the judiciary, the board of education in the case of the department of education, the board of regents in the case of the University of Hawaii, the Hawaii health systems corporation board in the case of the Hawaii health systems corporation, and any individual who represents one of these employers or acts in their interest in dealing with public employees.

8.02 Meetings shall be held during working hours, and the Employer shall permit its Employees not more than two (2) hours off with pay to attend the meetings.

8.03 The Union shall give written notice to the Employer at least ten (10) working days prior to the date of the meetings, and the Employer shall approve the date for the meetings provided that they do not unduly interfere with the normal operations of the Employer. The Union shall be responsible for informing its members of the date(s), time(s), and location(s) of the meetings. The Employer shall be responsible for notifying supervisors of authorization to release Employees, as operations permit, to attend a meeting.

Section 8 of the Unit 10 agreement provides in relevant part:

8.01 The Union may hold informational and educational meetings four (4) times each fiscal year to be conducted by its representatives and which shall be open to all Employees in the bargaining unit.

8.02 Meetings shall be held during working hours, and the Employer shall permit its Employees not more than two (2) hours off with pay to attend the meetings.

8.03 The Union shall give written notice to the Employer at least five (5) days prior to the date of the meetings, and the Employer shall approve the date for the meetings provided that they do not unduly interfere with the normal operations of the Employer.

On or about May 22, 2009, Laderta received a request for educational and informational meetings for Unit 01 and Unit 10 employees on the Island of Hawaii. pursuant to section 8 of the CBAs. The proposed dates for the meetings were July 13, 14, 15, and 16, 2009.

On or about July 6, 2009, Laderta received a request for educational and informational meetings for Unit 01 and Unit 10 employees on the islands of Maui, Lanai, and Molokai. The proposed dates were July 21, 23, 28, 30, 2009, and August 4 and 6, 2009.

On or about July 9, 2009, Laderta received a request for educational and informational meetings for Unit 01 and Unit 10 employees on the island of Kauai. The proposed dates were August 10 and 12, 2009.

On or about July 10, 2009, Laderta received a request for educational and informational meetings for Unit 01 and Unit 10 employees on the island of Oahu. The proposed dates were August 17, 19, 24, 26, and 28, 2009.

Respondents have not agreed to extend the Unit 01 or Unit 10 CBAs.

As of August 3, 2009, the parties were still negotiating the terms of new CBAs.

Laderta did not approve the requested educational and informational meetings because it was her understanding that educational and informational meetings are permissive subjects or bargaining, and she could therefore properly deny the requests because the CBAs which provided for such meetings had expired.

The Board finds that paid leave to attend educational and informational meetings is a matter that falls under the general category "paid leave" or "paid leave of absence," which is a mandatory subject of negotiations.

While the dates for the meetings on the islands of Hawaii, Kauai, and Maui have passed, the Oahu meetings were/are scheduled for August 17, 19, 24, 26, and 28, 2009, and meetings for the next quarter will be scheduled in the "near future" statewide, according to the Declaration of Dayton Nakanelua, dated August 4, 2009.

According to the Declaration of June Rabago dated August 3, 2009, Section 8 meetings are vital to the function of the UPW because it is during these meetings that employees raise concerns they have regarding negotiations or contract enforcement; it is where the Union can learn about possible grievances and violations of law; and where the Union keeps employees informed of all developments of collective bargaining and to develop and plan its program as the exclusive representative. Although Respondent asserts that employees can receive information from the Union's website, the Board finds that the website is not identical to the immediate back-and-forth dialogue that can occur during a face-to-face meeting. Additionally, the parties are currently negotiating a new agreement, and, according to the Rabago Declaration, the State's claim that the contracts were expired raised numerous concerns about negotiations and contract enforcement among the employees.

III. Conclusions of Law:

A. Interlocutory Order.

In Office of Hawaiian Affairs, et al. v. Housing and Community Development Corp., et al., 117 Hawai`i 174, 211, 177 P.3d 884, 921 (2008), the Hawaii Supreme Court discussed the standards for injunctive relief, and stated:

> The test for granting or denying temporary injunctive relief is three-fold: (1) whether the plaintiff is likely to prevail on the merits; (2) whether the balance of irreparable damage favors the issuance of a temporary injunction; and (3) whether the public interest supports granting an injunction.

The Court cited to Life of the Land v. Ariyoshi, 59 Haw. 156, 158, 577 P.2d 1116, 1118 (1978), and other cases.

1. Whether the Union is Likely to Prevail on the Merits.

Historically, the Board and the state courts have used federal precedent to guide their interpretation of state public employment law. See, e.g., Hokama v. University of Hawai`i, 92 Hawai`i 268, 272 n. 5, 990 P.2d 1150, 1154 n. 5 (1999).

In NLRB v. Katz, 369 U.S. 736, 82 S. Ct. 1107 (1962), the United States Supreme Court upheld a determination by the National Labor Relations Board that an employer commits an unfair labor practice if, without bargaining to impasse, the employer effects a unilateral change of an existing term or condition of employment.

In Katz, the union was newly certified and the parties had not yet reached in initial agreement through bargaining. Since then, the general "unilateral change" doctrine of Katz has been extended to cases where an existing agreement has expired and negotiations on a new agreement have yet to be completed. See, e.g., Laborers Health and Welfare Trust Fund v. Advanced Lightweight Concrete Co., 484 U.S. 539, 108 S. Ct. 830 (1988); Litton Financial Printing Division v. NLRB, 501 U.S. 190, 111 S. Ct. 2215 (1991).

In HGEA v. Linda Lingle, Civil No. 09-1-1375-06 (the "furlough" case), the First Circuit Court, in its order granting preliminary injunction, cited with approval to Katz, and stated in its conclusions of law:

> 21. Under the unilateral change doctrine, the employer cannot implement unilateral changes regarding matters that are mandatory subjects of bargaining, and which are in fact under discussion. NLRB v. Katz, 369 U.S. 736 (1962).
>
> 22. Katz was reading section 8(a)(5) of the National Labor Relations Act. This section is a duty to bargain collectively, which is defined as the duty to meet and confer in good faith with respect to wages, hours, and other terms and

> conditions of employment. This is a similar standard to what is provided in Art. XIII § 2 [of the Hawaii State Constitution]. Thus an employer's unilateral change in conditions of employment under negotiations – i.e. wages in this instance – violates the duty to bargain collectively.
>
> 23. Under Katz, certain terms and conditions of an expired agreement continue in effect by operation of law. They are no longer agreed-upon terms of a contract, they are terms imposed by law, so far as there is no unilateral right to change them. Therefore, because the ordered furloughs change wages, they cannot be imposed by unilateral action.

Although the circuit court was dealing with the duty to meet and confer in good faith with respect to wages, hours, and other terms and conditions of employment as found in the Hawaii State Constitution, a similarly worded duty to negotiate in good faith with respect to wages, hours, and other terms and conditions of employment is also found in HRS § 89-9, such that this Board will follow the conclusions of the circuit court with respect to this issue.

The Board therefore concludes that a party to a collective bargaining agreement may not make a unilateral change to a mandatory subject of bargaining contained in that agreement, after the agreement's expiration date, without bargaining to impasse.

In the present case, the sections of the Unit 1 and Unit 10 agreements at issue deal with Educational and Informational Meetings, found in Section 8 of the CBAs. That section provided that the Employer shall permit its Employees not more than two hours off with pay to attend informational and education meetings that may be held by the Union four times each fiscal year, provided the Union give the required notice and other conditions are met.

The question for the Board is whether Section 8 deals with a mandatory subject of bargaining subject to the Katz doctrine articulated by the circuit court.

The issue of time off with pay to attend educational and informational meetings appears to be similar to other types of "paid leave" that through common law have been mandatory subjects of bargaining. At least one foreign jurisdiction, the Supreme Court of Iowa, has found that the question of an employer granting a leave of absence for several union representatives to attend labor/management meetings, and if granted whether it be with or without pay, involved "leaves of absence" that was a statutory category of

mandatory subject of negotiations. State v. Public Employment Relations Board, 508 N.W.2d 668 (Iowa 1993). Similarly, here, the subject matter of Section 8 appears to involve an issue that falls under the broader category of "leaves of absence."

Also, see United Auto Workers, Local 6888, v. Central Michigan University, 550 N.W.2d 835 (Mich. App. 1996), where the Court of Appeals of Michigan upheld a decision by the Michigan Employment Relations Commission that a public employer's "release time" policy, in which the employer compensated elected union representatives while they engaged in union activities was a mandatory subject of bargaining that had to be maintained during negotiations following the termination of the underlying contract.

Although the Board has yet to find any cases in the Hawaii courts directly on point, the case of Cammack v. Waihee, 932 F.2d 765 (9th Cir. 1991), involved taxpayers' challenge to the State statute establishing the "Good Friday" holiday. As part of its reasoning and background of the case, the Ninth Circuit did note the following:

> [I]n 1970, the Hawaii Legislature enacted a public collective bargaining law which mandated that the terms and conditions of public employment be determined through a collective bargaining process. The statute recognized that "joint decisionmaking [between public employees and their employers] is the modern way of administering government." . . . The number and dates of paid leave days are among the mandatory subjects of collective bargaining. All collective bargaining agreements currently in effect between public employees and their employers provide for numerous paid leave days[.] (Emphasis added).

Also, in the Katz case, sick leave was a mandatory subject of bargaining that could not be unilaterally changed. In Service Employees International Union, AFL-CIO, Local 509 v. Labor Relations Commission, 729 N.E.2d 1100 (Mass. 2000), the Supreme Judicial Court of Massachusetts noted that, "Paid leave generally, including sick leave, is a term or condition of employment and is thus a mandatory subject of collective bargaining[.]" (Emphasis added). And in Piscataway Township Education Association v. Piscataway Township Board of Education, 704 A.2d 981 (N.J. Super. A.D. 1998), the Superior Court of New Jersey, Appellate Division, noted that, "Such subjects as compensation, work hours, work loads, and personal and other leaves of absence are considered to be 'terms and conditions of employment[.]'"

And, in NLRB v. BASF Wyandotte Corp., 798 F.2d 849 (5th Cir. 1986), the Fifth Circuit noted in a footnote that holidays, leaves of absences, jury duty, and sick leave are considered mandatory subjects of bargaining under the National Labor Relations Act, and concluded that paid time to union stewards for performance of union duties is a mandatory subject of bargaining under § 8(d) of the NLRA.

In summary, the Board concludes that paid leave to attend educational and informational meetings is a matter that falls under the general category "paid leave" or "paid leave of absence," which is a mandatory subject of negotiations. As such, a party cannot make a unilateral change to the provision governing this paid leave, after the agreement's expiration date, without bargaining to impasse.

The Board therefore finds there is substantial likelihood that the Union will prevail on the merits at hearing on this issue.

2. The Balance of Irreparable Damage.

With respect to balance of irreparable damage, the balance favors interlocutory relief. Section 8 of the agreements provides that the Union must give to the Employer advance notice of the meetings, and the Employer shall approve the date for meetings provided that they do not unduly interfere with the normal operations of the Employer. Accordingly, injury to the employer is mitigated by the provisions requiring advance notice by the Union and conditioning approval on the non-interference with the employer's normal operations.

By contrast, there is greater risk of injury to the Union in not granting interlocutory relief. According to the Declaration of June Rabago dated August 3, 2009, Section 8 meetings are vital to the function of the UPW because it is during these meetings that employees raise concerns they have regarding negotiations or contract enforcement; it is where the Union can learn about possible grievances and violations of law; and where the Union keeps employees informed of all developments of collective bargaining and to develop and plan its program as the exclusive representative. Although Respondent asserts that employees can receive information from the Union's website, the Board finds that the website is not identical to the immediate back-and-forth dialogue that can occur during a face-to-face meeting. Additionally, the parties are currently negotiating a new agreement, and, according to the Rabago Declaration, the State's claim that the contracts were expired raised numerous concerns about negotiations and contract enforcement among the employees.

Additionally, the Board finds that the Union's claim is not moot. The Hawaii Supreme Court has held that the duty of that Court, as of every other judicial tribunal, is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it. Courts will not consume time deciding abstract propositions of law or moot cases, and have no jurisdiction to do so. Diamond v. State, Board of Land and Natural Resources, 112 Hawai'i 161, 169-70, 145 P.3d 704, 712-13 (2006) (citing Wong v. Board of Regents, 62 Haw. 391, 394-95, 616 P.2d 201, 204 (1980)). The mootness doctrine is properly invoked where "events . . . have so affected the relations between the parties that the two conditions of justiciability relevant on appeal – adverse interest and effective remedy – have been compromised." Wong v. Board of Regents, 62 Haw. 391, 394-95, 616 P.2d 201, 204 (1980).

Here, according to the First Supplemental Declaration of Dayton Nakanelua dated August 4, 2009, Section 8 meetings on Kauai were scheduled for August 10 and 11, 2009 (prior to the Board's oral ruling on this issue); Oahu meetings were or are scheduled for August 17, 19, 24, 26, and 28, 2009; and meetings for the next quarter will be scheduled in the "near future" statewide.

3. Public Interest Supports the Interlocutory Relief.

Finally, public interest favors interlocutory relief in as much as "[t]he need for good faith bargaining or negotiation is fundamental to bringing to fruition the legislatively declared policy to promote harmonious and cooperative relations between government and its employees and to protect the public by assuring effective and orderly operations of government." Board of Education v. Hawaii Public Employment Relations Board, 56 Haw. 85, 87, 528 P.2d 809, 811 (1974). As noted above, the provisions of Section 8 requiring advance notice by the Union and conditioning approval on the non-interference with the employer's normal operations, mitigates injury to the employer, and by extension, to the public.

Accordingly, the Board grants Complainant's Motion for Interlocutory Relief and denies Respondents' Motion for Dismissal, or in the Alternative, Partial Dismissal of Motion for Interlocutory Relief

B. Motions for Summary Judgment.

HRS § 89-13(a), governing prohibited practices by public employers, provides in relevant part:

It shall be a prohibited practice for a public employer or its designated representative wilfully to:

(1) Interfere, restrain, or coerce any employee in the exercise of any right guaranteed under this chapter;

* * *

(5) Refuse to bargain collectively in good faith with the exclusive representative as required in section 89-9;

* * *

(7) Refuse or fail to comply with any provision of this chapter; or

(8) Violate the terms of a collective bargaining agreement[.]

A motion to dismiss is based on the contents of the complaint, the allegations of which are accepted as true and construed in the light most favorable to the complainant. Dismissal is improper unless it appears beyond doubt that the complainant can prove no set of facts in support of the claim which would entitle the complainant to relief. See Yamane v. Pohlson, 111 Hawai`i 74, 81, 137 P.3d 980, 987 (2006) (citing Love v. United States, 871 F.2d 1488, 1491 (9th Cir. 1989)).

Summary judgment should be granted only if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any (hereinafter, "relevant materials"), show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. GECC Financial Corp. v. Jaffarian, 79 Hawai`i 516, 521, 904 P.2d 530, 535 (Haw. App. 1995), *aff'd* 80 Hawai`i 118, 905 P.2d 624.

The burden is on the party moving for summary judgment to show the absence of any genuine issues as to all material facts, which, under applicable principles of substantive law, entitles the moving party to judgment as a matter of law. Id.

Inferences to be drawn from the underlying facts alleged in the relevant materials must be viewed in the light most favorable to the non-moving party. Id.

As discussed above, the Board concludes that paid leave to attend educational and informational meetings is a matter that falls under the general category "paid leave" or "paid leave of absence," which is a mandatory subject of negotiations. As such, a party cannot make a unilateral change to the provision governing this paid leave, after the agreement's expiration date, without bargaining to impasse.

Here, on and after May 22, 2009, the UPW requested that Units 01 and 10 employees be released to attend educational and informational meetings to be conducted in July and August 2009. On July 2, 2009, the Circuit Court held, that under Katz, certain terms and conditions of an expired agreement continue in effect by operation of law. On July 8, 2009, the UPW filed the instant Complaint. On and after July 9, 2009, Respondent Laderta acknowledged the UPW's requests for meetings and informed the various UPW division directors that the requests were not approved because the current CBA expired on June 30, 2009. Respondent Laderta later stated in her Declaration, dated August 4, 2009, that she did not approve each of the four requests for meetings because she understood the meetings to be a permissive subject of bargaining which she could deny because the CBAs which provided for the meetings had expired. Here, Respondent Laderta did not even respond to the UPW's May 22, 2009 request until July 9, 2009, after the CBA expired. In the present case, the Board finds that Respondents' continued refusal to agree to the requested meetings on the grounds that the contract provisions providing for such meetings were about to, or had already, expired rose to the level of wilful conduct, i.e., with conscious, knowing, or deliberate intent, and therefore violated § 8 of the applicable Units 01 and 10 CBAs and constituted unilateral change to a mandatory subject of bargaining without first bargaining to impasse, and a prohibited practice pursuant to HRS §§ 89-13(a)(5) and (8).

Because the Board finds no material facts in dispute, the Board grants summary judgment on favor of Complainant.

IV. Order.

For the reasons discussed above, the Board grants Complainant's Motion for Interlocutory Relief and Cross Motion for Summary Judgment; and denies Respondents' Motion for Dismissal or in the Alternative, Partial Dismissal of Motion for Interlocutory Relief, and Motion for Summary Judgment.

The Board orders Respondents to cease and desist from refusing to grant leave to employees to attend informational and educational meetings conducted by the UPW in accordance with Section 8 of the Unit 01 and Unit 10 2007-2009 CBAs. The Board further orders any employee who was required to use compensatory time or vacation leave to attend educational and informational meetings following the expiration of the contract be credited back that compensatory or vacation time. Upon

consideration of the UPW's Request for Remedies (Request), dated August 19, 2009, the Board finds that costs, fees, and fines are not warranted in this case, and in its discretion, denies the UPW's Request.

Respondents shall immediately post copies of this decision and order on its websites, and in conspicuous places at the worksites where employees of Units 01 and 10 assemble, and keep such copies posted for a period of 60 days from the initial date of posting.

Respondent shall notify the Board in writing of the steps taken to comply herewith in 10 days of the receipt of this order with a certificate of service of the notice on Complainant.

Complainant has ten days, unless such time is extended by the Board, to draft the proposed order and secure the approval as to form of Respondents' counsel thereon and to file the original and five copies of the proposed order with the Board, accompanied by a copy of the proposed order on a disk or e-mailed to the Board's Chair at James.B.Nicholson@hawaii.gov in Word or WordPerfect word processing format. If Respondents' counsel does not approve of the form of the proposed order, Respondents' counsel may file objections and a copy of a proposed order with the Board, accompanied by a copy of the proposed order on a disk or e-mailed in Word or WordPerfect word processing format to the Board Chair, within five working days.

DATED: Honolulu, Hawaii, September 3, 2009.

HAWAII LABOR RELATIONS BOARD

JAMES B. NICHOLSON, Chair

Emory J. Springer

EMORY J. SPRINGER, Member

SARAH R. HIRAKAMI, Member

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